

Earl C. Oppenheimer
General Counsel

John C. Danielson
General Attorney

Allan M. Charlton
Trial Attorney

Dennis W. Krakow
Trial Attorney

John A. Ponitz
Attorney

Mary P. Sclawy
Attorney

GT ✓

0-135A010

Grand Trunk Western Railroad Co
Law Department
131 West Lafayette Boulevard
Detroit, Michigan 48226
(313) 962-2260

Date MAY 14 1980 **RECORDATION NO.** 11785
Fees 50.00 **FILED** 1425
MAY 14 1980 - 9 10 AM
ICE Washington, D.C.
INTERSTATE COMMERCE COMMISSION
May 8, 1980
File: 352-K

Mrs. Agatha L. Mergenovich
Secretary
Interstate Commerce Commission
12th & Constitution Avenue, N.W.
Washington, D.C. 20423

Dear Mrs. Mergenovich:

Enclosed for recordation pursuant to Section 11303 of the Interstate Commerce Act are the original counterpart of the following document and a facsimile copy of the original counterpart:

Agreement dated as of the 1st day of November, 1979 between Kellogg Company (the "Lessor") and Grand Trunk Western Railroad Company (the "Lessee").

The addresses of the parties to the aforesaid Agreement are:

Lessor: Kellogg Company
Porter Street
Battle Creek, Michigan 49016

Lessee: Grand Trunk Western Railroad
Company
131 West Lafayette Boulevard
Detroit, Michigan 48226

The equipment covered by the aforesaid Agreement consists of One Hundred (100) 60 foot 10-1/8 inch 70 ton capacity all steel single sheathed box cars with 16 foot plugged door openings, equipped with 20 inch travel cushion underframes, bearing Road Numbers GTW Series 305100 through 305199, inclusive.

All said equipment bears markings indicating that ownership is in the Lessor.

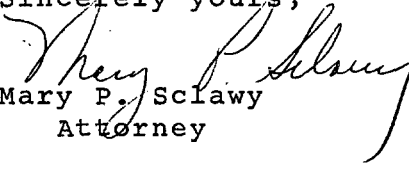
RECEIVED
MAY 14 1980
FEE DEPARTMENT BR.
C.C.

Mrs. Agatha L. Mergenovich
Secretary, I.C.C.
May 8, 1980 - File: 352-K
Page Two

Enclosed is our check number 173451 in the amount of \$50.00 for the required recordation fee. Please accept for recordation the original counterpart of the enclosed agreement, stamp the facsimile counterpart with your recordation number and return it to me.

The undersigned is attorney for the Lessee mentioned in the enclosed agreement and has knowledge of the matters set forth therein.

Sincerely yours,


Mary P. Sciawy
Attorney

MPS:bjm

cc: Neil Nyberg, Esq., Kellogg Company

Interstate Commerce Commission
Washington, D.C. 20423

5/16/80

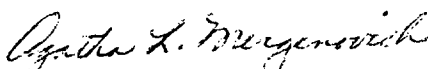
OFFICE OF THE SECRETARY

**Mary P. Sclawy, Atty.
Grand Trunk Western RR. Co.
131 West Lafayette Boulevard
Detroit Michigan 48226**

Dear **Sir:**

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on **5/14/80** at **9:10am**, and assigned re-recording number(s). **11785 & 11786**

Sincerely yours,


Agatha L. Mergenovich
Secretary

Enclosure(s)

A G R E E M E N T

THIS AGREEMENT dated this 1st day of November, 1979, by and between Kellogg Company, a corporation of Delaware, hereinafter called "Kellogg" and Grand Trunk Western Railroad Company, a corporation of Michigan, hereinafter called "Grand Trunk."

11785
RECORDATION NO. _____ Filed 1425

W I T N E S S E T H:

MAY 14 1980 -9 10 AM

INTERSTATE COMMERCE COMMISSION

1. Kellogg agrees to lease to the Grand Trunk and the Grand Trunk agrees to accept and use exclusively upon the terms and conditions herein set forth the following described cars and to pay Kellogg upon receipt of such cars for the use of each of such cars the following service charges:

<u>Number of Cars</u>	<u>Type of Car</u>	<u>Lease Per Car</u> <u>Charge Per Day</u>
100 G.T.W. Series 305100 to 305199	60' 10 1/8" 70 Ton capacity all steel single sheathed box car with 16' plugged door opening, equipped with 20" travel cushion underframe.	\$7.70 per car per day subject to escalation by 1% for each 1% increase in hourly time charges as specified in Circular No. OT-10, Code of Car Service and Car Hire Rules Freight.

Kellogg warrants that the above described cars comply with the Association of American Railroads' requirements for interchange and conform to the standards contained in the United States Safety Appliance Acts.

2. This agreement shall be binding upon the parties hereto, their respective successors, assigns and legal representatives and shall remain in full force and effect with regard to each of the cars for a period ending ten (10) years from the effective date of this contract, subject to cancellation by either party at any anniversary date of the first day of the month upon the giving of sixty (60) days' written notice prior thereto to such other party.

In the event any cars require replacement or extensive changes in design, in order to be suitable for transportation at any time during this agreement, upon completion of such replacement or extensive design changes, the lease charge per day shall be subject to renegotiation by both parties.

Kellogg agrees to deliver each of the cars as soon as possible after the execution of this contract to Grand Trunk at Battle Creek, Michigan, and Grand Trunk agrees to pay the per car charge on each of the above described cars from the date such car has been delivered to Battle Creek, Michigan, until each such car is returned to Kellogg at or after the termination of this agreement.

3. Grand Trunk agrees to pay Kellogg the aforesaid per car charge on or before the last day of each calendar month, covering the rentals which shall have accrued during the immediately preceding calendar month, during the life of this agreement and until such time thereafter as all cars have been returned to Kellogg and all rentals therefore have been paid. Payment shall be made by mail to Kellogg Company, c/o P.O. Box 7112, Chicago, Illinois, 60680, and payment shall be effective when received by Kellogg.

4. Each of the cars shall be subject to the Grand Trunk's inspection before loading; and the loading of each such car by the Grand Trunk or at its direction will constitute acceptance thereof by the Grand Trunk and shall be conclusive evidence of the fit and suitable condition of each such car for the purpose of transporting commodities to be loaded therein.

5. Grand Trunk agrees to keep records pertaining to the interchange movements of such cars. Grand Trunk agrees to furnish to Kellogg data required by Kellogg to keep an accurate record of said cars.

6. Grand Trunk shall notify Kellogg as soon as possible following knowledge of destruction or heavy damage to any of the cars as defined in the Association of American Railroads Code of Rules governing the condition of and repairs to freight and passenger cars. Kellogg agrees to pay for the maintenance and repair of said cars to the extent of the standards of railroad companies and existing Association of American Railroads' rules. No repairs, other than running repairs, as contemplated in the Association of American Railroads' rules, shall be made to any of the cars by Grand Trunk for Kellogg's account without Kellogg's prior consent.

If any of the cars become unfit for service, other than for running repairs, the per car charge payable by Grand Trunk to Kellogg shall cease from date of notification to Kellogg until such car is repaired or until another similar car shall have been placed in the service of Grand Trunk by Kellogg in substitution thereof. In the event any of the herein leased cars are destroyed or badly damaged while on Grand Trunk's line, settlement shall be made therefore as provided in the Association of American Railroads Code of Rules for the interchange of traffic, which is made a part hereof, and the per car charge shall cease to accrue against Grand Trunk on the day per diem would cease under said Association of American Railroads' rules. In the event any of the herein leased cars is badly damaged or destroyed off the Grand Trunk line, Grand Trunk shall make settlement direct with the foreign line damaging or destroying such car or cars as provided in the Association of American Railroads' Code of Rules for the interchange of traffic, which is made a part hereof, and the per car charge shall cease on the day per diem would cease under said Association of American Railroads' rules and Grand Trunk will reimburse Kellogg said amount as full settlement for said car. Kellogg shall have the right but shall not be obligated to replace any of such cars but in the event it exercises such right, the per diem charge shall commence from the date of delivery of the replacement car to the Grand Trunk.

7. No liability shall attach to Kellogg for injury, damage or loss of any kind whatsoever in connection with the use of said cars, whether it be to persons or property or to the vehicles, and Grand Trunk agrees to hold Kellogg harmless from and against any claims or payments including all attorney fees and other costs of litigation which Kellogg may be required to pay as a result thereof. Nothing contained in this paragraph 7 shall be construed to release Kellogg from any claim or liability resulting from negligence of Kellogg.

8. If Grand Trunk shall fail to perform or abide by any of its obligations hereunder for a period of sixty (60) days after receipt of notification thereof, Kellogg at its election may either (a) terminate this agreement immediately or (b) withdraw said cars from

the service of Grand Trunk and deliver the same, or any thereof, to others upon such terms as Kellogg may see fit, and, in either case, Grand Trunk shall be liable to Kellogg for all rentals hereunder, less any rentals received by Kellogg from others for any of the cars. Kellogg Company may, at its option, terminate this agreement (a) in the event that bankruptcy, reorganization, arrangement, or insolvency proceedings or other proceedings for relief under any bankruptcy or similar law for the relief of debtors shall be instituted by or against Grand Trunk, or (b) in the event that Grand Trunk shall make any assignment for the benefit of creditors or shall permit or there shall occur any involuntary transfer of its interest hereunder or of all or substantially all of its property by bankruptcy, the appointment of a receiver or trustee, execution, any other judicial or administrative decree or process, or otherwise; unless in every such case such proceedings shall be dismissed or such assignment, transfer, decree or process shall within sixty (60) days from the filing or other effective date thereof be nullified or otherwise rendered ineffective. In the event that Kellogg fails for a period of sixty (60) days after receipt of notification thereof to perform any of its obligations hereunder, Grand Trunk may forthwith terminate this agreement.

9. Grand Trunk agrees to return said cars to Kellogg at a point on Grand Trunk's rails designated by Kellogg at the expiration of this agreement, as hereinafter provided, free from all liens and charges whatsoever, in the same or as good condition, order and repair as received, ordinary wear and tear excepted and subject to the provisions of paragraph 6 hereof, and with all the same kind and character of devices, appliances or appurtenances with which said cars were equipped at time of delivery to Grand Trunk. However, the preceding sentence shall not be binding upon Grand Trunk for any car or cars which have been destroyed during the life of this agreement, and which are referred to more specifically in paragraph 6 above.

10. Kellogg expressly agrees that Grand Trunk may collect and retain any and all car hire charges applicable to these cars.

11. It is understood and agreed that the cars to be furnished by Kellogg to Grand Trunk hereunder may at the time of delivery thereof to Grand Trunk be subject to the provisions of an equipment trust or lease and may thereafter be subjected to one or more other equipment trust or lease agreements by Kellogg. It is further understood that the cars will be stencilled or plated from time to time to set forth ownership of such cars by the trustee, trustees, lessor or lessors under such equipment trust or lease agreements and that this agreement is and shall at all times be subject to the rights of the trustee, trustees, lessor or lessors under such equipment trust or lease agreements.

12. Unless the written consent of Kellogg shall be first obtained, Grand Trunk shall not assign this lease or any of its rights or interests hereunder, nor sub-lease any car or part thereof, nor permit any of its rights or interests hereunder to become subject to any lien, charge, or encumbrance of any kind; provided that nothing herein contained shall prevent Grand Trunk from allowing the use of the cars by others upon railroad lines (other than the Grand Trunk line) in the continental United States and Canada in the usual interchange of traffic.

IN WITNESS WHEREOF the parties hereto have duly executed this agreement in two counterparts (each of which shall be deemed an original).

Witness:

Robert L. Lawrence

KELLOGG COMPANY, a corporation of Delaware

By A. L. Sullivan

ATTEST:

W. H. Camar

GRAND TRUNK WESTERN RAILROAD COMPANY

By W. H. Camar

STATE OF MICHIGAN)
) ss.:
COUNTY OF WAYNE)

On this 8th day of February, 1980, before me personally appeared W. H. Cramer, to me personally known, who being by me duly sworn, says that he is a Vice President of GRAND TRUNK WESTERN RAILROAD COMPANY, that the seal affixed hereto is the corporate seal of said corporation, that the foregoing instrument was signed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

J. Isabelle Matusko
Notary Public, Wayne County, Mich.

J. ISABELLE MATUSKO
Notary Public, Oakland County, Michigan
My Commission expires: Acting in Wayne County, Michigan
My Commission Expires March 14, 1983

(Corporate Seal)

(Notarial Seal)

STATE OF MICHIGAN)
) ss.:
COUNTY OF CALHOUN)

On this 8th day of February, 1980, before me personally appeared R. L. Burrows, to me personally known, who being by me duly sworn, says that he is Executive Vice President - Logistics of the KELLOGG COMPANY; that the seal affixed hereto is the corporate seal of said corporation, that the foregoing instrument was signed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Dayle J. Boston

Notary Public, Calhoun County,
Michigan

My Commission expires: _____

DAYLE J. BOSTON
Notary Public, Calhoun County, Mich.
My Comm. Expires June 29, 1983

(Corporate Seal)

(Notarial Seal)